

FISHERIES

Notice by the Secretary of State June 22, 1885; exchanges of memorandums and notes March 12–June 22, 1885, extending the fishery clauses of treaty of May 8, 1871

Entered into force June 22, 1885

Expired January 1, 1886

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NOTICE OF JUNE 22, 1885, BY THE SECRETARY OF STATE

By direction of the President, the undersigned, Secretary of State, hereby makes known to all whom it may concern that a temporary diplomatic agreement has been entered into between the Government of the United States and the Government of Her Britannic Majesty in relation to the fishing privileges which were granted by the fishery clauses of the treaty between the United States and Great Britain of May 8, 1871¹, whereby the privilege of fishing, which would otherwise have terminated with the treaty clauses on the 1st of July proximo, may continue to be enjoyed by the citizens and subjects of the two countries engaged in fishing operations throughout the season of 1885.

This agreement proceeds from the mutual good-will of the two Governments, and has been reached solely to avoid all misunderstanding and difficulties which might otherwise arise from the abrupt termination of the fishing of 1885 in the midst of the season. The immunity which is accorded by this agreement to the vessels belonging to citizens of the United States engaged in fishing in the British American waters will likewise be extended to British vessels and subjects engaged in fishing in the waters of the United States.

The joint resolution of Congress of March 3, 1883,² providing for the termination of the fishing articles of the treaty of May 8, 1871, having repealed in terms the act of March 1, 1873,³ for the execution of the fishing articles, and that repeal being express and absolute from the date of the termination of the said fishing articles, under due notification given and proclaimed by the President of the United States, to wit, July 1, 1885, the present temporary agreement in no way affects the question of statutory enactment or exemption from customs duties, as to which the abrogation of the fishing articles remains complete.

¹ TS 133, *ante*, p. 170.

² 22 Stat. 641.

³ 17 Stat. 482.

As part of this agreement, the President will bring the whole question of the fisheries before Congress at its next session in December, and recommend the appointment of a joint commission by the Governments of the United States and Great Britain to consider the matter, in the interest of maintaining good neighborhood and friendly intercourse between the two countries, thus affording a prospect of negotiation for the development and extension of trade between the United States and British North America.

Copies of the memoranda and exchanged notes on which this temporary agreement rests are appended.

Reference is also made to the President's proclamation of January 31, 1885,⁴ terminating the fishing articles of the Treaty of Washington.

By direction of the President:

T. F. BAYARD
Secretary of State

EXCHANGES OF MEMORANDUMS AND NOTES

*British Memorandum of March 12, 1885*⁵

The fishery clauses of the Treaty of Washington of 1871 will expire on the 1st of July next. It has been represented by the Canadian Government that much inconvenience is likely to arise in consequence, unless some agreement can be made for an extension of the period.

When the time comes (1st of July next) American ships will be actually engaged in fishing within the territorial waters of the Dominion. These vessels will have been fitted out for the season's fishing and have made all their usual arrangements for following it up until its termination in the autumn. If, under these circumstances, the provincial or municipal authorities in Canada were to insist upon their strict rights, and to compel such vessels, on pain of seizure, to desist from fishing, considerable hardship would be occasioned to the owners, and a feeling of bitterness engendered on both sides which it is clearly the interest of both Governments to avert.

It seems therefore desirable, in order to avoid such possible complications, that both Governments should come to an agreement under which the clauses might be in effect extended until the 1st of January, 1886.

If this were done the existing state of things would come to an end at a date between the fishery season of 1885 and that of 1886, and an abrupt transition at a moment when fishery operations were being carried on would be thus avoided.

WASHINGTON, *March 12, 1885.*

⁴ 23 Stat. 837.

⁵ The memorandum accompanied a personal letter to the Secretary of State from L. S. Sackville West, the British Minister.

United States Memorandum of April 21, 1885

The legislation passed by the Congress of the United States, act of March 1, 1873, for the execution of the fishery articles of the Treaty of Washington, has been repealed by the joint resolution of March 3, 1883, the repeal to take effect July 1, 1885. From that date the effects of the fisheries articles of the Treaty of Washington absolutely determine, so far as their execution within the jurisdiction of the United States is concerned, and without new legislation by Congress modifying or postponing that repeal the Executive is not constitutionally competent to extend the reciprocal fisheries provisions of the treaty beyond the 1st of July next, the date fixed by the action of Congress.

Mr. West's memorandum of March 12, 1885, suggests the mutual practical convenience that would accrue from allowing the fishing ventures commenced prior to July 1, 1885, to continue until the end of the season for fishing of that year, thus preventing their abrupt termination in the midst of fishing operations on the 1st of July.

It has been, moreover, suggested on the part of the Province of Newfoundland and of the Dominion of Canada, that in view of the mutual benefit and convenience of the present local traffic, consisting of the purchase of ice, bait, wood, and general ship supplies by the citizens of the United States engaged in fishing from the inhabitants of the British American fishing coast, the usual operations of the fishing season of 1885 should be continued by the fishing vessels belonging to citizens of the United States until the end of the season of that year, and that the local authorities of Newfoundland and of the Dominion of Canada, in a spirit of amity and good neighborhood, should abstain from molesting such fishermen or impeding their progress or their local traffic with the inhabitants incidental to fishing during the remainder of the season of 1885, and all this with the understanding that the President of the United States would bring the whole question of the fisheries before Congress at its next session in December, and recommend the appointment of a commission in which the Governments of the United States and of Great Britain should be respectively represented, which commission should be charged with the consideration and settlement, upon a just, equitable, and honorable basis, of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America.

The President of the United States would be prepared to recommend the adoption of such action by Congress with the understanding that in view and in consideration of such promised recommendation there would be no enforcement of restrictive and penal laws and regulations by the authorities of the Dominion of Canada or of the Province of Newfoundland, against the fishermen of the United States resorting to British-American waters between the 1st of July next and the close of the present year's fishing season;

the mutual object and intent being to avoid any annoyance to the individuals engaged in this business and traffic, and the irritation or ill-feeling that might be engendered by a harsh or vexatious enforcement of stringent local regulations on the fishing coast pending an effort to have a just and amicable arrangement of an important and somewhat delicate question between the two nations.

Public knowledge of this understanding and arrangement can be given by an exchange of notes between Mr. West and myself, which can be given to the press.

The Secretary of State to the British Minister

DEPARTMENT OF STATE,
Washington, April 22, 1885

DEAR MR. WEST: I have on several occasions lately, in conversation, acquainted you with my interest in the fisheries memorandum which accompanied your personal letter of March 12.

Several informal talks I have had with Sir Ambrose Shea have enabled me to formulate the views of this Government upon the proposition made in behalf of the Dominion and the Province of Newfoundland, and I take pleasure in handing you herewith a memorandum embodying the results. If this suits, I shall be happy to confirm the arrangement by an exchange of notes at your early convenience.

I am, my dear Mr. West, very sincerely yours,

T. F. BAYARD

The Hon. L. S. SACKVILLE WEST, &c.

British Memorandums of June 13, 1885

It is proposed to state in notes according temporary arrangements respecting fisheries that an agreement has been arrived at under circumstances affording prospect of negotiation for development and extension of trade between the United States and British North America.

The Government of Newfoundland do not make refunding of duties a condition of their acceptance of the proposed agreement, but they rely on it having due consideration before the international commission which may be appointed.

The Secretary of State to the British Minister

DEPARTMENT OF STATE,
Washington, June 19, 1885

MY DEAR MR. WEST: I assume that the two confidential memoranda you handed to me on the 13th instant embrace the acceptance by the Dominion and the British-American coast provinces of the general features of my memorandum of April 21, concerning a temporary arrangement respecting the fisheries, with the understanding expressed on their side that the "agreement has been arrived at under circumstances affording prospect of negotiation for development and extension of trade between the United States and British North America."

To such a contingent understanding I can have no objection. Indeed, I regard it as covered by the statement in my memorandum of May [April] 21, that the arrangement therein contemplated would be reached "with the understanding that the President of the United States would bring the whole question of the fisheries before Congress at its next session in December, and recommend the appointment of a commission in which the Governments of the United States and of Great Britain should be respectively represented, which commission should be charged with the consideration and settlement, upon a just, equitable, and honorable basis, of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America."

The equities of the question being before such a mixed commission would doubtless have the fullest latitude of expression and treatment on both sides; and the purpose in view being the maintenance of good neighborhood and intercourse between the two countries, the recommendation of any measures which the commission might deem necessary to attain those ends would seem to fall within its province, and such recommendations could not fail to receive attentive consideration.

I am not, therefore, prepared to state limits to the proposals to be brought forward in the suggested commission on behalf of either party.

I believe this statement will be satisfactory to you, and I should be pleased to be informed at the earliest day practicable of your acceptance of the understanding on behalf of British North America; and by this simple exchange of notes and memoranda the agreement will be completed in season to enable the President to make the result publicly known to the citizens engaged in the fishing on the British-American Atlantic coast.

I have the honor to be, with the highest respect, sir, your obedient servant,

T. F. BAYARD

The Hon. L. S. SACKVILLE WEST

The British Minister to the Secretary of State

BRITISH LEGATION,
Washington, June 20, 1885

MY DEAR MR. BAYARD: I beg to acknowledge the receipt of your confidential note of yesterday's date, concerning the proposed temporary arrangement respecting the fisheries, which I am authorized by Her Majesty's Government to negotiate with you on behalf of the Government of the Dominion of Canada and the Government of Newfoundland, to be effected by an exchange of notes founded on your memorandum of the 21st of April last.

The two confidential memoranda which I handed to you on the 13th instant contain, as you assume, the acceptance by the Dominion and the British-American coast provinces of the general features of your above-mentioned memorandum, with the understanding expressed on their side that the agreement has been arrived at under circumstances affording prospects of negotiation for the development and extension of trade between the United States and British North America, a contingent understanding to which, as you state, you can have no objection, as you regard it as covered by the terms of your memorandum of April 21.

In authorizing me to negotiate this agreement, Earl Granville states, as I have already had occasion to intimate to you, that it is on the distinct understanding that it is a temporary one, and that its conclusion must not be held to prejudice any claim which may be advanced to more satisfactory equivalents by the colonial governments in the course of the negotiation for a more permanent settlement. Earl Granville further wishes me to tell you that Her Majesty's Government and the colonial governments have consented to the arrangement, solely as a mark of good will to the Government and people of the United States, and to avoid difficulties which might be raised by the termination of the fishery articles in the midst of a fishing season; and also the acceptance of such a *modus vivendi* does not, by any implication, affect the value of the inshore fisheries by the Governments of Canada and Newfoundland. I had occasion to remark to you that while the colonial governments are asked to guarantee immunity from interference to American vessels resorting to Canadian waters, no such immunity is offered in your memorandum to Canadian vessels resorting to American waters, but that the Dominion Government presumed that the agreement in this respect would be mutual. As you accepted this view, it would, I think, be as well that mention should be made to this effect in the notes.

Under the reservations, as above indicated, in which I believe you acquiesce, I am prepared to accept the understanding on behalf of British North America, and to exchange notes in the above sense.

I have the honor to be, with the highest respect, sir, your obedient servant.

L. S. SACKVILLE WEST

Hon. T. F. BAYARD, &c.

The Secretary of State to the British Minister

DEPARTMENT OF STATE,
Washington, June 20, 1885

SIR: I have just received your note of to-day's date in regard to the proposed temporary arrangement touching the fisheries.

Undoubtedly it is our clear and mutual understanding that the arrangement now made is only temporary, and that it proceeds from the mutual good will of our respective Governments, and solely to avoid all difficulties which might otherwise arise from the termination of the fishing of 1885 in the midst of the season.

I understand, also, that the same immunity which is accorded by this agreement to the vessels belonging to the citizens of the United States, engaged in fishing in the British-American waters, will be extended to British vessels and subjects engaged in fishing in the waters of the United States. Perceiving, therefore, no substantial difference between our respective propositions and these statements as contained in our correspondence on the subject, I shall consider the agreement as embodied in our memoranda and the correspondence between us and as thus concluded; and public notification to that effect will be given in a few days by the President.

I have the honor to be, with the highest consideration, sir, your obedient servant,

T. F. BAYARD

The Hon. L. S. SACKVILLE WEST, &c.

The Secretary of State to the British Minister

DEPARTMENT OF STATE,
Washington, June 20, 1885

SIR: In compliance with your verbal request of this morning that I should restate part of my note to you of the 19th, I repeat that the arrangement, whereby a *modus vivendi* on the fishing question has been reached, rests on the memoranda and correspondence exchanged; that your memorandum of the 13th instant expressed the understanding on your side that the "agreement has been arrived at under circumstances affording prospect of negotiation for development and extension of trade between the United States and British North America;" that I not only had no objection to such an understanding, but, in fact, regarded it as amply embraced in our proposal to recommend a commission to deal with the whole subject in the interest of good neighborhood and intercourse, and that the recommendation of any measures which the commission might deem necessary to attain those ends would seem to fall within its province, and such recommendations could not fail to have attentive consideration.

Having thus not only admitted the proviso of your memorandum in your own language, but gone still further and pointed out that no limits would be set, so far as I was concerned, to the proposals to be brought forward in the suggested commission on behalf of either party, I do not see how it is possible for me to give any stronger assurance that the understanding has "been reached under circumstances affording a prospect of negotiation for the development and extension of trade between the United States and British America."

I have the honor to be, with the highest consideration, sir,

T. F. BAYARD

The Hon. L. S. SACKVILLE WEST, &c.

The British Minister to the Secretary of State

WASHINGTON, June 22, 1885

SIR: I have the honor to acknowledge the receipt of your notes of the 20th and 22d instant in regard to the proposed temporary arrangement touching the fisheries, in which you state that it is our clear and mutual understanding that such arrangement is only temporary, and that it proceeds from the mutual good-will of our respective Governments, and solely to avoid all difficulties which might otherwise arise from the termination of the fishing of 1885 in the midst of the season. Also that the same immunity which is accorded by this Government to the vessels belonging to the citizens of the United States engaged in fishing in the British-American waters will be extended to British vessels and subjects engaged in fishing in the waters of the United States, and that the agreement has been reached under circumstances affording a prospect of negotiation for the development and extension of trade between the United States and British North America.

As therefore there exists no substantial difference between our respective propositions and the statements as contained in our correspondence on the subject, I shall consider the agreement as embodied in our memoranda and the correspondence between us as thus concluded, and shall inform Her Majesty's Government and the Governments of the Dominion of Canada and Newfoundland accordingly.

I have the honor to be, with the highest consideration, sir, your obedient servant,

L. S. SACKVILLE WEST

Hon. T. F. BAYARD, &c.